COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTIETH CONGRESS

H. R. 13647

AND STATEMENT

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A BILL To amend first subdivision of section six hundred and twenty-nine of the Revised Statutes of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first subdivision of section six hundred and twenty-nine of the Revised Statutes of the United States is hereby amended so as to read as follows:

"SEC. 629. The circuit courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State, or of the District of Columbia, or of a Territory of the United States: *Provided*, That no circuit court shall have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange."

To the Committee on the Judiciary:

In support of the petition we have presented in behalf of our fellow-citizens of the District of Columbia seeking equal rights with the citizens of the several States before the circuit courts of the United States, we respectfully submit the following statement for your consideration.

Under the provisions of the judiciary act, approved September 24, 1789, the jurisdiction of the circuit courts of the United States was extended to "controversies between citizens of different States." (Sec. 629, U. S. Rev. Stats.)

The first case in which the status of the citizens of the District of Columbia was made the jurisdictional question was that of Hepburn *v.* Ellzey (2 Cr., 452–3) argued in the Supreme Court in 1804, when Alexandria was within the limits of the District of Columbia, and it was held by the court, construing that clause of the judiciary act, that a citizen of the District of Columbia was not a citizen of a State, so as to give him standing as a suitor in the United States courts.

In the case of Barney *v.* Baltimore (6 Wall., 280), wherein partition of land in Maryland was sought in 1867, it appeared that three out of four complainants seeking this relief before the circuit court of that District were citizens of the District of Columbia. The court, upon the question of jurisdiction being raised, held that citizens of the District of Columbia, not being citizens of a State within the provisions of the judiciary act, could not sue and that the objection was well made and the bill was dismissed.

In the year 1897, the question was again raised in the case of Hooe *v.* Jamieson (166 U. S., 395), and the court again held that where it appeared that a party to a suit in the United States circuit court was a citizen of the District of Columbia the court was without jurisdiction to hear the case, and so the parties were out of court.

More frequently in these days is this question of the rights of citizens of the District of Columbia to the protection of their interests before the courts of the United States submitted to counsel—in very important cases, wherein the facts in each case, the residence of the several parties, and the many local considerations surrounding particular cases are such, as make it important to the litigants on either side to secure the decisions of their rights under the laws of the United States, in the courts of the United States, through to the court of last resort. In such cases it works great hardship to the suitor to be held down to the jurisdiction of State courts to which under the decisions of the Supreme Court they are now restricted.

The injustice of this discrimination against the citizens of the District of Columbia is so self-evident, that your petitioners believe that your honorable committee will readily agree that a prompt remedy should be applied.

If this be conceded, the only question to be determined is as to the steps to be followed to correct the injustice. So far-reaching is the effect of the construction of the law as it stands, that no matter what may be the interests involved, if one of the parties necessary to a determination of the rights involved appears on the record to be a citizen of the District of Columbia, the courts of the United States are barred to all. The general importance of these common rights demand correction of the evil, even should an amendment of the Constitution be required to effect it.

But we do not think this tedious method is necessary.

We respectfully submit that in reason and in the decided cases will be found conclusive arguments to sustain our position, that by the legislative action of the Congress itself, amending section 629 of the Revised Statutes of the United States, a complete remedy can be supplied, extending the judical power of the United States circuit courts to Controversies between citizens of the District of Columbia and the citizens of any State.

We preface our argument in support of this by reference to the preamble to the Constitution, wherein the people declared that one of the principal purposes of that instrument was "to establish justice" for "ourselves and our posterity."

And Article IV, section 2 provides that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several states."

At that time the citizens of what is now the District of Columbia were citizens of Maryland.

In McCulloch *v.* St. of Maryland (4 Wh., 403), Marshall, C. J., declared that the Constitution obtained its authority from the people; that the Government proceeds directly from the people and in the name of the people, and that its powers are to be exercised directly on them and for their benefits.

He declares that the laws of the United States, when made in pursuance of the Constitution, form the supreme law of the land "anything in the Constitution or the laws of any State to the contrary notwithstanding." He proceeds to construe and define the meaning of the language of the final clause of section 8, Article I of the Constitution, and lays down the rule that the powers of Congress under

the Constitution extend to whatever is "needful and adapted" to the particular occasion.

Since the powers of the Government are principally to be exercised for the benefit of the people, for all of the people of the United States, conditions and needs of that portion of the citizens of the United States found within the District of Columbia are to-day so great, so extensive, and so important (in respect of the relief we specially seek to-day) as to make the legislation asked for most needful and specially adapted to secure for us equal justice before the judicial tribunals of the United States.

We have, however, the highest authority for this proposition.

In the earliest case in which this jurisdictional question came up for consideration in the Supreme Court of the United States (Hepburn *v.* Ellzey, 2 Cr., 452–3), which was argued in the February term 1804, that court by Marshall, C. J., after arguments which went thoroughly into the question, said:

> It is true that as citizens of the United States and of that particular District which is subject to the jurisdiction of Congress, it is extraordinary that the courts of the United States, which are open to aliens and to the citizens of every State in the Union, should be closed upon them. But this is a subject for legislative, not for judicial consideration.

That court, in the case of Loughborough *v.* Blake, 5 Wheaton 317, remarks that "if the general language of the Constitution should be confined to the States, still the sixteenth paragraph of section 8, Article I, gives to Congress the power of exercising exclusive legislation in all cases whatsoever within this District."

Congress, in the first section of the act approved July 8, 1846, under which the portion of the District formerly within the county of Alexandria was retroceded to the State of Virginia, recites the power it had under the Constitution therein to "full and absolute right and jurisdiction as well of soil as of persons residing or to reside therein."

If then in the exercise of its exclusive right under the Constitution Congress is to legislate "in all cases whatsoever" in respect of the soil, this power is declared to include also the right to legislate in all cases whatsoever as to the persons residing therein.

Congress having evidenced its right to give back by legislation to a portion of the residents of the District the full rights of citizenship, we may logically find the right in Congress to give unto the remaining citizens the single right of suing in the United States courts for the protection of their legal rights.

The argument in favor of the retrocession to Virginia is stated in the preamble to the act of July 8, 1846, to rest upon the belief by Congress that they did not require that part of the territory for the purposes of the seat of the Government.

As shown above, it was not deemed that the jurisdiction given to suits between citizens of different States was of any importance at the time of the adoption of the Constitution. The citizens of the District of Columbia are by the Constitution given over for the protection of their rights to the exclusive control of Congress "in all cases whatsoever." And it is clearly for Congress alone to consider what is needful for the protection of our rights and by legislation to supply it.

In the case of Loughborough *v.* Blake (supra) it was contended that under section 8, Article I, of the Constitution, no direct tax could be imposed upon residents of the District of Columbia, because that section related to the States of the Union; yet the court held that although the language of the second section of Article I required that the direct tax should be extended to all the States, the right of exclusive legislation in all cases whatsoever within the District gave to Congress the power to impose such direct tax, the requirements of the Government in respect of its revenues clearly leading to the court's conclusions.

If in that case the language of the Constitution could be made to extend beyond what its strict letter, which applied only to States as such, would seem to mean, the right of Congress to legislate for the correction of a most unjust discrimination against the large body of the citizens of the United States resident in this District should be conceded.

The language of Chief Justice Marshall in Hepburn *v.* Ellzey, within two years after the District became formally the seat of government, shows that the court assumed that when necessity required it Congress would legislate to correct the extraordinary conditions, even then recognized.

In U. S. *v.* Reese (92 U. S., 213) the Supreme Court says:

> Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and the manner of the protection may be such as Congress, in the legitimate exercise of its legislative discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected.

And in Strauder *v.* W. Va. (100 U. S., 303) this doctrine is affirmed, quoting Prigg *v.* Com. (16 Peters, 539) to the effect that "a right or an immunity, whether created by Congress or only guaranteed by it, even without any express delegation of power, may be protected by Congress."

After the passage of the judiciary act the assembly of Maryland under section 2 of an act approved December 27, 1791, "relinquished to the Congress and Government of the United States full and absolute right and exclusive jurisdiction as well of soil as of persons residing or to reside thereon, pursuant to the eighth section of Article I of the Constitution."

That act reserved to the State control over the citizens to be affected thereby as to all their rights under the Constitution and laws of the United States until the formal acceptance of control over the soil by the Congress.

Among those rights was that of suing in the United States circuit courts under the provisions of the judiciary act.

The act of cession committed the residents of that part of the State which came within the limits of the District of Columbia to the exclusive legislative jurisdiction of the Congress for the protection of all their rights in all cases whatsoever.

At the time of the adoption of the Constitution of the United States, under the provisions of which the judiciary act of September 24, 1789, was passed, it was declared under section 2 of Article III that "the judicial power is extended to all cases in law and equity arising under the Constitution, the laws of the United States * * * to controversies between the citizens of different States."

The population of the thirteen original States was barely over 3,000,000.

The language for that particular provision was discussed at the time (see the reports of the Virginia convention, pp. 109–122–128) and it was supposed to be of very little importance, and this we can readily understand when we consider the limited amount and simple character of the business transactions at that time, in respect of which appeals to the United States courts were deemed likely to be made.

But to-day, with over 80,000,000 population, thousands of corporations in every field of industry and commerce, involving vast millions of money values, increased in importance by the ties of interstate communication by railroad, telegraph, and telephone connections, bringing the rights of individuals and corporations throughout our vast territory into close business connections; with the marvelous expansion of the control of Congress, and of the various Departments of the Government, over and in respect to every conceivable field of business and industry, affecting alike the whole people and the interests of the Government, it can be seen at once that here at the seat of government is centered a vast amount of business with which the citizens of the District must necessarily be connected; that citizens and corporations from the different States of the Union, through contracts with the residents of the District, whether in commercial matters connected with the Government or through the employment of professional services to be given here, must create many conditions and occasions when legal rights, in cases of dispute and differences of opinion, must require appeals to the United States courts for satisfactory judicial determination.

In view of the premises, we respectfully submit that we can fairly contend that there is under the Constitution and in the light of decided cases inherent power in Congress itself to so amend section 629 of the United States Revised Statutes as to extend the jurisdiction of the United States circuit courts to the citizens of the District of Columbia in controversies with the citizens of the several States.

And we pray such action as to your honorable bodies may be deemed wise and within your power.

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